

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

No. C 07-4274 CW

ZACHARIAH JUDSON RUTLEDGE,

Plaintiff,

v.

COUNTY OF SONOMA, et al.,

Defendants.

ORDER GRANTING IN PART
COUNTY DEFENDANTS'
MOTION TO DISMISS AND
GRANTING DEFENDANT
POTTS' MOTION TO
DISMISS

Defendants County of Sonoma, Sonoma County Sheriff's
Department, Sonoma County District Attorney's Office, Stephan
Passalacqua, J. Michael Mullins, Greg Jacobs, Christine M. Cook,
Russel L. Davidson, James Patrick Casey and Beau M. Martin
(collectively, the County Defendants) move to dismiss certain of
the claims asserted against them. Defendant Michael Potts moves
separately to dismiss all of the claims against him. Plaintiff
Zachariah Rutledge opposes both motions. The matter was heard on
June 12, 2008. Having considered oral argument and all of the
papers submitted by the parties, the Court grants the County
Defendants' motion in part and grants Defendant Potts' motion.

BACKGROUND

This case arises out of Plaintiff's prosecution for two murders that occurred in 1998. Plaintiff was acquitted of these crimes after a jury trial. He now charges a number of the individuals who were involved in his prosecution with malfeasance.

Plaintiff claims that in August, 2000, Defendant Potts, a criminalist for the California Department of Justice, authored a forensic laboratory report containing false statements. As alleged in the complaint, "The false facts were included in the forensic laboratory report with malice and reckless disregard of the truth." Compl. ¶ 17.

In May, 2002, Mr. Potts allegedly colluded with Defendant Casey, a Deputy District Attorney, and Defendant Davidson, a detective with the Sonoma County Sheriff's Department, to present an affidavit containing false evidence to a magistrate in order to secure a warrant for Plaintiff's arrest. Plaintiff claims that Mr. Casey and Mr. Davidson omitted exculpatory evidence from the affidavit "in an effort to deceive and mislead the magistrate into issuing the requested Arrest Warrant." *Id.* ¶ 23. At approximately the same time, Defendant Martin, another detective with the Sonoma County Sheriff's Department, allegedly drafted an affidavit in support of an application for a search warrant. Plaintiff asserts that this affidavit did not provide probable cause to search Plaintiff's residence. On May 8, 2002, Mr. Casey and Mr. Davidson, along with a number of unidentified individuals, arrested Plaintiff and conducted a search of his residence.

Plaintiff alleges that, after his arrest, the prosecution team engaged in bad-faith conduct. Although the complaint contains few

1 details about this conduct, it alleges that both Mr. Casey and
2 Defendant Jacobs, the Deputy District Attorney who led the team
3 prosecuting Plaintiff, knew that exculpatory evidence existed but
4 withheld it from Plaintiff. The complaint does not specify what
5 the exculpatory evidence was. Plaintiff also alleges that Mr.
6 Potts presented false testimony at the preliminary hearing.

7 Although the complaint does not disclose this, the Court takes
8 judicial notice of the fact that on March 8, 2004, Plaintiff moved
9 to dismiss the charges against him based on "recently discovered
10 misrepresentations made by senior criminalist Michael Potts of the
11 California Department of Justice at the preliminary examination."
12 County Defs.' Req. for Judicial Notice Ex. A (criminal docket) at
13 13. Plaintiff's motion was granted and the case was dismissed on
14 June 14, 2004. The next day, the prosecution filed another
15 complaint against Plaintiff. The action proceeded to trial, after
16 which Plaintiff was acquitted.

17 After Plaintiff's acquittal, Defendant Cook, an Assistant
18 District Attorney, allegedly made a number of false statements in a
19 radio broadcast. Specifically, she allegedly represented that
20 Plaintiff had not been found innocent, that he had failed a
21 polygraph test during the course of the homicide investigation, and
22 that he was a murderer. Plaintiff maintains that Ms. Cook refused
23 to retract these statements despite Plaintiff's request that she do
24 so.

25 Plaintiff does not allege that Defendant Mullins, the former
26 Sonoma County District Attorney, or Defendant Passalacqua, his
27 successor, were personally involved in the malfeasance described
28 above. Rather, he asserts that these Defendants maintained

1 policies and procedures that led to widespread violations of
2 constitutional rights by employees of the District Attorney's
3 office, and that they failed to supervise properly the other
4 individual Defendants to ensure that Plaintiff's rights were
5 respected. He asserts similar allegations against three branches
6 of the county government: the County of Sonoma itself, the District
7 Attorney's Office and the Sheriff's Department.

8 LEGAL STANDARD

9 A complaint must contain a "short and plain statement of the
10 claim showing that the pleader is entitled to relief." Fed. R.
11 Civ. P. 8(a). When considering a motion to dismiss under Rule
12 12(b)(6) for failure to state a claim, dismissal is appropriate
13 only when the complaint does not give the defendant fair notice of
14 a legally cognizable claim and the grounds on which it rests. See
15 Bell Atl. Corp. v. Twombly, __ U.S. __, 127 S. Ct. 1955, 1964
16 (2007).

17 In considering whether the complaint is sufficient to state a
18 claim, the court will take all material allegations as true and
19 construe them in the light most favorable to the plaintiff. NL
20 Indus., Inc. v. Kaplan, 792 F.2d 896, 898 (9th Cir. 1986).

21 Although the court is generally confined to a consideration of the
22 allegations in the pleadings, the court may also consider matters
23 of which judicial notice may be taken, and doing so does not
24 convert the motion into one for summary judgment. United States v.
25 Ritchie, 342 F.3d 903, 909 (9th Cir. 1993).

26 When granting a motion to dismiss, the court is generally
27 required to grant the plaintiff leave to amend, even if no request
28 to amend the pleading was made, unless amendment would be futile.

1 Cook, Perkiss & Liehe, Inc. v. N. Cal. Collection Serv. Inc., 911
 2 F.2d 242, 246-47 (9th Cir. 1990). In determining whether amendment
 3 would be futile, the court examines whether the complaint could be
 4 amended to cure the defect requiring dismissal "without
 5 contradicting any of the allegations of [the] original complaint."
 6 Reddy v. Litton Indus., Inc., 912 F.2d 291, 296 (9th Cir. 1990).

7 DISCUSSION

8 I. County Defendants' Motion to Dismiss

9 A. Claims Under California Civil Code § 52.1

10 Plaintiff asserts a number of claims under "§ 51 et seq." and
 11 "§ 52 et seq." of the California Civil Code, which he labels the
 12 Unruh Civil Rights Act.¹ Although many of the sections that follow
 13 §§ 51 and 52 are clearly not applicable to this case, Plaintiff
 14 clarifies in his opposition to the County Defendants' motion that
 15 he intends to assert his claims under § 52.1. This section imposes
 16 civil liability on a person who, "whether or not acting under color
 17 of law, interferes by threats, intimidation, or coercion, or
 18 attempts to interfere by threats, intimidation, or coercion, with
 19 the exercise or enjoyment by any individual or individuals of
 20 rights secured by the Constitution or laws of the United States, or
 21 of the rights secured by the Constitution or laws of [California]."
 22 Cal. Civ. Code § 52.1(a).

23 Section 52.1 is broader in scope than 42 U.S.C. § 1983 in that

24
 25 ¹There is confusion among California courts about which
 26 sections of the Civil Code comprise the Unruh Act. See Stamps v.
 27 Superior Court, 136 Cal. App. 4th 1441, 1449-50 (2006). By its own
 28 terms, the Act includes only § 51, not the seemingly related
 sections immediately following it. See Cal. Civ. Code § 51 ("This
section shall be known, and may be cited, as the Unruh Civil Rights
Act.") (emphasis added). Nonetheless, a number of courts refer to
 the Unruh Act as encompassing more than simply § 51.

1 it extends liability for interference with civil rights to private
2 actors. See Venegas v. County of Los Angeles, 153 Cal. App. 4th
3 1230, 1242 (2007). On the other hand, it imposes an additional
4 requirement, not found in § 1983, that the interference with civil
5 rights be made "by threats, intimidation, or coercion." See id.

6 The County Defendants argue that the Unruh Civil Rights Act
7 was enacted to provide a remedy for victims of hate crimes. They
8 therefore claim that, because Plaintiff does not allege that he
9 belongs to a protected class, he may not take advantage of the
10 Act's provisions. The California Supreme Court has squarely
11 rejected this argument:

12 According to County, [§ 52.1] applies only to so-called
13 hate crimes and requires a showing, not alleged here,
14 that the defendants acted with "discriminatory animus,"
15 i.e., an intent to threaten or coerce another in
16 violation of their constitutional rights, based on the
17 victim's actual or apparent racial, ethnic, religious, or
18 sexual orientation or other minority status. We
19 disagree, as nothing in Civil Code section 52.1 requires
20 any showing of actual intent to discriminate.

21

22 Assembly Bill 2719 explained that "[s]ection 52.1 of the
23 Civil Code guarantees the exercise or enjoyment by any
24 individual or individuals of rights secured by the
25 Constitution or laws of the United States, or of the
26 rights secured by the Constitution or laws of this state
27 without regard to his or her membership in a protected
28 class identified by its race, color, religion, or sex,
among other things." ([Emphasis] added.) We cannot
reasonably interpret this language, or the unambiguous
language of section 52.1 itself, to restrict the benefits
of the section to persons who are actual or perceived
members of a protected class.

Venegas v. County of Los Angeles, 32 Cal. 4th 820, 841-43 (2004)
(citation omitted). Accordingly, in pursuing a claim for
constitutional violations under § 52.1, a plaintiff "need not
allege that defendants acted with discriminatory animus or intent,

1 so long as [the predicate] acts were accompanied by the requisite
2 threats, intimidation, or coercion." Id. at 843.

3 If Plaintiff can show that the constitutional violations of
4 which he complains were accomplished by "threats, intimidation, or
5 coercion," he may be able to succeed on his § 52.1 claim. It does
6 not appear from the complaint that he will be unable to make such a
7 showing. See id. (permitting the plaintiffs to proceed on a § 52.1
8 claim for unlawful search and seizure); Cole v. Doe 1 thru [sic] 2
9 Officers of City of Emeryville Police Dep't, 387 F. Supp. 2d 1084,
10 1103 (N.D. Cal. 2005) ("Use of law enforcement authority to
11 effectuate a stop, detention (including use of handcuffs), and
12 search can constitute interference by 'threat[], intimidation, or
13 coercion' if the officer lacks probable cause to initiate the stop,
14 maintain the detention, and continue a search.") (omission in
15 original). Accordingly, Plaintiff's causes of action under § 52.1
16 will not be dismissed on this basis.

17 B. Redundant Claims

18 Plaintiff purports to assert sixteen separate causes of
19 action. The County Defendants move to dismiss many of these claims
20 as redundant.²

21 1. Federal Claims

22 Plaintiff's first cause of action is brought pursuant to 42
23 U.S.C. §§ 1983 and 1985 and is asserted against all Defendants for
24
25

26 ²Many of the claims discussed in this section are asserted
27 against both the County Defendants and Defendant Potts. Because
28 the redundancy of these claims does not depend on the Defendant
against whom they are asserted, any claim dismissed by the Court is
dismissed with respect to all Defendants, including Mr. Potts.

1 unreasonable search and seizure, excessive use of force³ and cruel
2 and unusual punishment, all in violation of the Fourth Amendment.
3 This cause of action also alleges a violation of Plaintiff's right
4 to due process as guaranteed by the Fifth and Fourteenth
5 Amendments. These claims of general constitutional violations are
6 re-asserted in more specific terms as individual causes of action,
7 as discussed below. The first cause of action is therefore
8 dismissed as redundant.

9 Plaintiff's fourth cause of action is also brought pursuant to
10 §§ 1983 and 1985. It is asserted against Defendants Casey,
11 Davidson, Potts and County of Sonoma and alleges false arrest. The
12 complaint does not specify which of Plaintiff's "rights,
13 privileges, or immunities secured by the Constitution and laws" of
14 the United States were infringed. 42 U.S.C. § 1983. Nonetheless,
15 Plaintiff's assertion of false arrest is most consonant with a
16 claim for unreasonable seizure in violation of the Fourth
17 Amendment, based on his initial arrest. Plaintiff's sixth cause of
18 action, also brought pursuant to §§ 1983 and 1985 against
19 Defendants Casey, Davidson, Potts and County of Sonoma, is entitled
20 "false imprisonment." Like the fourth cause of action, it does not
21 specify which federal law or constitutional provision these
22 Defendants allegedly violated. The Court will construe this claim,
23 as well, as asserting unreasonable seizure in violation of the
24 Fourth Amendment, based on Plaintiff's initial arrest.⁴ As such,

25 ³Plaintiff has agreed to withdraw any excessive use of force
26 claim. Such claims are therefore dismissed.

27 ⁴To the extent the sixth cause of action is based on conduct
28 subsequent to Plaintiff's initial arrest, it is subsumed in his
Fourth Amendment malicious prosecution claim, discussed below.

1 the claim is redundant of the fourth cause of action and is
2 dismissed. See Arpin v. Santa Clara Valley Transp. Agency, 261
3 F.3d 912, 923-25 (9th Cir. 2001) (treating false arrest and false
4 imprisonment claims as a single claim under the Fourth Amendment).

5 Plaintiff's twelfth cause of action is brought pursuant to
6 §§ 1983 and 1985 and is asserted against all Defendants. It
7 alleges that Defendants deprived Plaintiff of his Fifth Amendment
8 "due process right to a fair trial." Compl. ¶ 140. The Court
9 construes this as a procedural due process claim. The sixteenth
10 cause of action, entitled, "Malicious Prosecution," is brought in
11 part pursuant to §§ 1983 and 1985⁵ and is asserted against all
12 Defendants as well. It also alleges that Plaintiff's due process
13 rights were infringed. The Court will construe this, not as a
14 procedural due process claim, which would be redundant of the
15 twelfth cause of action, nor as a substantive due process claim,
16 which would not be viable, see Albright v. Oliver, 510 U.S. 266
17 (1994) (plurality opinion), but as a Fourth Amendment malicious
18 prosecution claim, see id. This claim is distinct from the Fourth
19 Amendment claim for false arrest and imprisonment asserted in the
20 fourth cause of action. It is therefore not redundant, and is not
21 dismissed.

22 Plaintiff's ninth cause of action is brought pursuant to
23 § 1983 against Defendants Casey and Davidson. It is entitled,
24 "Violation of United States Constitution by Presenting False
25 Affidavit in Support of Arrest Warrant." It alleges that, by
26

27 ⁵This cause of action is also brought pursuant to California
28 Civil Code § 52.1 and the California Tort Claims Act. These claims
are discussed below.

1 allegedly submitting a false affidavit in order to obtain an arrest
2 warrant, these Defendants violated Plaintiff's Fourth Amendment
3 right against unreasonable seizure and his Fifth Amendment right to
4 due process. This claim is subsumed in Plaintiff's fourth and
5 twelfth causes of action, which allege the same violations. The
6 ninth cause of action merely specifies in greater detail the
7 particular way in which Plaintiff's Fourth and Fifth amendment
8 rights were allegedly infringed. Because it, too, is redundant, it
9 is dismissed.

10 The claims dismissed in this section are dismissed with
11 prejudice because they are inherently duplicative and Plaintiff
12 faces no prejudice by their dismissal.

13 2. State Claims

14 Plaintiff's second cause of action is brought pursuant to
15 California Civil Code § 52.1 and California's Tort Claims Act
16 (TCA), Cal. Gov't Code § 810 et seq., and is asserted against all
17 Defendants. It alleges the same violations of federal
18 constitutional rights as the first cause of action. It also
19 alleges violations of the analogous rights conferred by the
20 California Constitution. And, as with the first cause of action,
21 the claims of general constitutional violations in the second cause
22 of action are re-asserted in more specific terms as individual
23 causes of action elsewhere in the complaint, as discussed below.
24 The second cause of action is therefore dismissed as redundant.

25 Plaintiff's fifth cause of action, like the fourth cause of
26 action, is entitled, "False Arrest," but it is brought pursuant to
27 § 52.1 rather than § 1983 or § 1985. The Court construes this
28 claim as alleging an unlawful seizure in violation of the Fourth

1 Amendment and the California Constitution, based on Plaintiff's
2 initial arrest. Plaintiff's seventh cause of action, like his
3 sixth cause of action, is entitled, "False Imprisonment" but, like
4 the fifth cause of action, it is brought pursuant to § 52.1 rather
5 than § 1983 or § 1985. To the extent it is based on violations of
6 Plaintiff's rights under the federal or California constitutions,
7 the seventh cause of action is redundant of the fifth cause of
8 action for the same reason that the sixth cause of action is
9 redundant of the fourth cause of action. The constitutional claims
10 in the seventh cause of action are therefore dismissed. However,
11 the Court will also construe this cause of action as asserting a
12 claim for the common law tort of false imprisonment. This claim is
13 not redundant, and the Court will not dismiss it on this basis.

14 Plaintiff's sixteenth cause of action for malicious
15 prosecution, in addition to being brought pursuant to §§ 1983 and
16 1985, is also brought pursuant to § 52.1 and the TCA. As with the
17 §§ 1983 and 1985 claims, the Court will construe the § 52.1 claim
18 as alleging malicious prosecution in violation of the Fourth
19 Amendment. This claim is not redundant and will not be dismissed.
20 The Court will also construe this cause of action as asserting a
21 claim for the common law tort of malicious prosecution. This claim
22 is not redundant either, and the Court will not dismiss it on this
23 basis.

24 Plaintiff's eighth cause of action, entitled, "Violation of
25 State of California Constitution Article I Section 13 by Presenting
26 False Affidavit in Support of Arrest Warrant," is analogous to the
27 ninth cause of action, except that it is brought pursuant to § 52.1
28 rather than § 1983. As such, it is redundant of the fifth cause of

1 action for the same reason that the ninth cause of action is
2 redundant of the fourth cause of action. Accordingly, it is
3 dismissed.

4 The claims dismissed in this section are dismissed with
5 prejudice because they are inherently duplicative and Plaintiff
6 faces no prejudice by their dismissal.

7 C. Defamation

8 The County Defendants assert that Plaintiff's defamation claim
9 against Defendant Cook should be dismissed because, although he
10 alleges that Ms. Cook "published" a number of statements, the
11 complaint does not specify which of those statements, if any, are
12 false. Although it may be inferred that Plaintiff asserts that Ms.
13 Cook's statement that he is a murderer is not true, he does not do
14 so explicitly, and it is not clear whether he asserts that the
15 other statements are false.⁶ Accordingly, this claim is dismissed
16 with leave to amend to specify that the statements are false.

17 D. Intentional Infliction of Emotional Distress

18 Plaintiff's third cause of action bears the title,
19 "Intentional/Negligent Infliction of Emotional Distress" and the
20 subtitle, "Entitling relief under [California Government Code]
21 § 810 et seq." As noted above, the TCA is comprised of California
22 Government Code § 810 et seq. Because this cause of action does
23 not allege violation of a specific statute, the Court construes it
24 as asserting claims for the common law torts of intentional
25 infliction of emotional distress and negligent infliction of
26 emotional distress.

27
28 ⁶The Court notes that it is accurate to say that Plaintiff was
not "found innocent" -- he was, in fact, found not guilty.

1 The last paragraph in the cause of action states that
2 Plaintiff is entitled to compensation "and punitive damages under
3 the California Tort Claims Act, [Cal. Gov't Code] § 810 et seq and
4 the California Unruh Civil Rights Act, [Cal. Civ. Code] § 51 et seq
5 and [Cal. Civ. Code] § 52 et seq." The County Defendants argue
6 that the cause of action "improperly includes reference to the
7 Civil Code sections, and their remedies, and as such is improperly
8 pleaded." County Defs.' Mem. at 9. They ask that the Court
9 dismiss the claim with leave to amend "to properly assert the cause
10 of action as a common law tort." Id.

11 The fact that the third cause of action seeks civil penalties
12 or punitive damages under the Unruh Act is not a basis for
13 dismissing the entire claim. However, the County Defendants are
14 correct that the special remedies provided by the Unruh Act are
15 available only in connection with violations of the Act's
16 provisions. See Cal. Civ. Code § 52. Plaintiff has not cited any
17 authority for the proposition that he can rely on the Unruh Act to
18 provide an additional remedy for a common law tort. The only case
19 Plaintiff cites in support of his position, Los Angeles County
20 Metropolitan Transportation Authority v. Superior Court, 123 Cal.
21 App. 4th 261 (2004), does not address this issue; it addresses only
22 whether the civil penalties ordinarily available under the Unruh
23 Act may be recovered against a county defendant, notwithstanding
24 California Government Code § 818's prohibition on the recovery of
25 punitive damages against public entities. Accordingly, the Court
26 strikes the references to the California Civil Code in ¶ 67 of the
27 complaint.

1 E. Assault and Battery

2 The caption of the complaint states that Plaintiff seeks
3 damages for, among other things, assault and battery. However, the
4 body of the complaint does not contain a cause of action for
5 assault and battery. For this reason, the County Defendants ask
6 that the Court strike the reference in the caption. Plaintiff
7 argues, "While it is true that there are no explicit allegations
8 for 'assault and battery,' the allegations are implied." Pl.'s
9 Opp. to County Defs.' Mot. at 11. However, there are no facts
10 alleged in the complaint that support a claim for assault and
11 battery. And although Plaintiff purports to assert sixteen
12 separate causes of action, none of them suggests that he intends to
13 pursue a claim for assault and battery. Accordingly, the Court
14 strikes the caption's reference to assault and battery. Plaintiff
15 may amend the complaint to assert such a claim if he is able
16 truthfully to do so.

17 F. Claims against Defendant Martin

18 If a person knowingly or with reckless disregard for the truth
19 includes material false statements or omits material facts in an
20 affidavit submitted in support of a warrant application, he or she
21 may be liable under § 1983 for a Fourth Amendment violation.
22 Franks v. Delaware, 438 U.S. 154, 157 (1978); Butler v. Elle, 281
23 F.3d 1014, 1024-26 (9th Cir. 2002); Cassette v. King County, 2008
24 WL 1968765, at *2 (W.D. Wash. 2008). To succeed on such a claim, a
25 plaintiff must: 1) show that the affidavit "contained a false
26 statement or omission that was deliberately false or made with
27 reckless disregard for the truth"; and 2) "establish that 'without
28 the dishonestly included or omitted information the affidavit is

1 insufficient to establish probable cause.'" Cassette, 2008 WL
2 1968765 at *2 (quoting Mendocino Env'tl. Ctr. v. Mendocino County,
3 192 F.3d 1283, 1295 (9th Cir. 1999)).

4 The only allegation in the complaint against Defendant Martin
5 is that he drafted an affidavit that included a statement of
6 probable cause in support of the prosecution's application for a
7 search warrant. Plaintiff maintains that the affidavit actually
8 failed to provide probable cause -- specifically, by failing to set
9 forth a nexus between the offense for which Plaintiff was arrested
10 and the locations to be searched. Plaintiff has not, however,
11 identified a material false statement or an omission of material
12 fact in the affidavit, and thus has not stated a claim against Mr.
13 Martin. Accordingly, the claims against Mr. Martin are dismissed.

14 Plaintiff may amend the complaint to include an adequate
15 factual basis for a Fourth Amendment claim against Mr. Martin if he
16 can truthfully do so. Any amendment must allege that Mr. Martin
17 included a specific material false statement or omitted a specific
18 material fact in the warrant affidavit.

19 II. Defendant Potts' Motion to Dismiss

20 Defendant Potts argues that the § 1983 claims against him
21 should be dismissed based on the statute of limitations. He also
22 argues that the state law claims against him should be dismissed
23 because Plaintiff failed to file a timely administrative claim as
24 required by the TCA. Finally, he argues that the allegations in
25 the complaint are too vague to put him on notice of the claims
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1 against him and their bases in fact.⁷

2 A. Claims Under 42 U.S.C. § 1983

3 1. Fourth Amendment Claims

4 Mr. Potts moves to dismiss Plaintiff's § 1983 claims against
5 him for Fourth Amendment violations because this lawsuit was not
6 filed within the applicable two-year limitations period.⁸ The
7 parties incorrectly assume that all of Plaintiff's Fourth Amendment
8 claims against Mr. Potts accrued on the same date. As discussed
9 above, the Court construes the complaint as asserting Fourth
10 Amendment claims against Mr. Potts, as well as other Defendants,
11 under § 1983 both for false arrest and imprisonment and for
12 malicious prosecution, each of which constitutes a form of
13 unreasonable seizure. A § 1983 claim for malicious prosecution,
14 however, "does not accrue until the plaintiff is acquitted, because
15 acquittal is an element of the claim." RK Ventures, Inc. v. City
16 of Seattle, 307 F.3d 1045, 1060 n.11 (9th Cir. 2002); see also
17 Albright, 510 U.S. at 280 (Ginsburg, J., concurring) ("Once it is
18 recognized . . . that Albright remained effectively 'seized' for
19 trial so long as the prosecution against him remained pending, and
20 that Oliver's testimony at the preliminary hearing, if deliberately
21 misleading, violated the Fourth Amendment by perpetuating the

22 ⁷Plaintiff does not dispute that the § 1983 claims against Mr.
23 Potts in his official capacity are not viable. Accordingly, these
24 claims are dismissed.

25 ⁸Mr. Potts incorrectly assumes that the one-year period
26 applicable to false imprisonment tort claims applies to Plaintiff's
27 § 1983 claim for unlawful arrest and imprisonment. In fact, the
28 two-year limitations period applicable to general personal injury
actions applies to this claim. See Owens v. Okure, 488 U.S. 235,
249-250 (1989); McDougal v. County of Imperial, 942 F.2d 668, 672
(9th Cir. 1991); Greene v. Bloom, 2008 WL 1882800, at *7-*9 (E.D.
Cal.); Cal. Civ. Proc. Code § 335.1.

1 seizure, then the limitations period should have a different
2 trigger [than Albright's arrest]. The time to file the § 1983
3 [malicious prosecution] action should begin to run not at the
4 start, but at the end of the episode in suit, i.e., upon dismissal
5 of the criminal charges against Albright."). Because Plaintiff was
6 not acquitted until September 29, 2006 and filed this action on
7 August 20, 2007, the claim may be timely.⁹ Accordingly, it will
8 not be dismissed as barred by the statute of limitations.

9 As for Plaintiff's § 1983 claim against Mr. Potts for false
10 arrest and imprisonment, he maintains that he did not discover Mr.
11 Potts' allegedly unconstitutional conduct until January 27, 2004,
12 when he learned of a "letter from Potts to Assistant District
13 Attorney Greg Jacobs, which stated that he did not perform the
14 forensic analysis on the paint sample, which he testified he did
15 perform during the preliminary hearing in the underlying criminal
16 matter." Pl.'s Supp. Br. at 5. Because, under federal law, a
17 claim "accrues when a party knows or has reason to know of the
18 injury which is the basis of the cause of action," Kimes v. Stone,
19 84 F.3d 1121, 1128 (9th Cir. 1996) (internal quotation marks
20 omitted), Plaintiff argues that this claim accrued on January 27,
21
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23 ⁹Mr. Potts notes that, as discussed above, on June 14, 2004,
24 the court granted Plaintiff's motion to dismiss the case against
25 him, due to Mr. Potts' alleged misrepresentations at the
26 preliminary hearing. However, a new complaint was filed the next
27 day and the case eventually proceeded to trial. The Court cannot
28 determine at this early stage of the litigation whether, based on
these events, Plaintiff's Fourth Amendment malicious prosecution
claim against Mr. Potts might have accrued when his case was
dismissed in 2004 rather than when he was acquitted in 2006.
However, Mr. Potts may, if he wishes, re-visit this issue in a
motion for summary judgment.

1 2004.¹⁰

2 Further, Plaintiff points out that California law provides
3 that, if a cause of action accrues while an individual is
4 imprisoned on criminal charges, the limitations period is tolled
5 for up to two years. See Cal. Civ. Proc. Code § 352.1(a).
6 Accordingly, Plaintiff argues, the limitations period for his
7 Fourth Amendment false arrest claim was tolled for two years, until
8 January 27, 2006. He therefore asserts that he had until January
9 27, 2008 to file this lawsuit.

10 At oral argument, Mr. Potts conceded that Plaintiff's claim
11 would not be time-barred if his allegations concerning the date on
12 which he learned of the conduct giving rise to it are true.
13 However, these allegations appear nowhere in the complaint and are
14 not supported by a declaration; they are contained solely in
15 Plaintiff's sur-reply. They therefore may not be considered on
16 this motion. The latest date specified in the complaint on which
17 Mr. Potts is alleged to have been involved in Plaintiff's
18 prosecution is in 2002. See Compl. ¶¶ 21, 32. Thus, based on the
19 allegations in the complaint, it appears that the Fourth Amendment
20 false arrest claim is barred by the statute of limitations.

21 Plaintiff also argues that the limitations period for his
22

23 ¹⁰In Wallace v. Kato, __ U.S. __, 127 S. Ct 1091 (2007), the
24 Supreme Court held that a Fourth Amendment claim for unlawful
25 arrest, where the arrest is followed by criminal proceedings,
26 accrues at the time the plaintiff is detained pursuant to legal
27 process -- "when, for example, he is bound over by a magistrate or
28 arraigned on charges." Id. at 1096. Wallace is distinguishable,
however, because there was no delay in the plaintiff's discovery of
the conduct that gave rise to his cause of action. The Court need
not determine whether Wallace is also distinguishable because,
unlike the present case, it involved a claim of unlawful arrest
without process of any kind.

1 false arrest and imprisonment claim was tolled, not merely for two
2 years, but until he was acquitted. In support of this argument, he
3 relies on § 945.3 of the California Government Code, which provides
4 in part:

5 No person charged by indictment, information, complaint,
6 or other accusatory pleading charging a criminal offense
7 may bring a civil action for money or damages against a
8 peace officer or the public entity employing a peace
9 officer based upon conduct of the peace officer relating
10 to the offense for which the accused is charged,
11 including an act or omission in investigating or
12 reporting the offense or arresting or detaining the
13 accused, while the charges against the accused are
14 pending before a superior court.

15 Any applicable statute of limitations for filing and
16 prosecuting these actions shall be tolled during the
17 period that the charges are pending before a superior
18 court.

19 This statute, however, applies only to claims against peace
20 officers. Mr. Potts argues that, as a criminalist for the
21 California Department of Justice, he is not a peace officer.

22 The definition of a peace officer is the subject of Part 2,
23 Title 3, Chapter 4.5 of the California Penal Code. It does not
24 appear that a criminalist is a peace officer pursuant to the terms
25 of that chapter, nor are there any other facts in the complaint to
26 support the conclusion that Mr. Potts is a peace officer.¹¹

27 Accordingly, Plaintiff's § 1983 claim against Mr. Potts for
28 false arrest and imprisonment in violation of the Fourth Amendment
is dismissed. Plaintiff may amend the complaint if he can

¹¹Plaintiff alleges that Mr. Potts, despite his title of criminalist, is essentially an investigator for the Department of Justice, a position which falls within the statutory definition of a peace officer. However, the complaint contains few specifics about Mr. Potts' involvement in Plaintiff's prosecution, and nothing in the complaint suggests that Mr. Potts served as an investigator.

1 truthfully add facts sufficient to show that his cause of action
2 did not accrue until January 27, 2004 and was tolled for two years,
3 or that Mr. Potts is a peace officer within the meaning of the
4 California Penal Code, or both.

5 2. Due Process

6 It is not clear from the complaint whether, in addition to the
7 § 1983 claims against Mr. Potts for false arrest and imprisonment
8 and for malicious prosecution in violation of the Fourth Amendment,
9 Plaintiff also intends to assert a § 1983 claim against him on some
10 other basis. The complaint suggests that Plaintiff intends to
11 pursue either a procedural or substantive due process claim against
12 Mr. Potts. However, in Albright, 510 U.S. 266, Chief Justice
13 Rehnquist, writing for a plurality of the Court, stated that,
14 although prosecution without probable cause may be actionable under
15 § 1983 if it is accompanied by incarceration or some other palpable
16 consequence, such a claim must be treated as flowing from a
17 violation of the Fourth Amendment right against unreasonable
18 seizure, rather than from the Fifth Amendment's guarantee of
19 substantive due process.

20 Plaintiff makes a § 1983 claim for violation of the Fourth
21 Amendment, subject to the discussion above. There appears to be no
22 factual basis for a procedural due process claim against Mr.
23 Potts.¹² Thus, there are apparently no additional § 1983 claims
24 against him. Plaintiff may, however, amend the complaint if he
25 wishes to assert a § 1983 claim against Mr. Potts on some other
26

27 ¹²To the extent the twelfth cause of action purports to assert
28 a procedural due process claim against Mr. Potts, it is dismissed
as lacking factual support in the complaint.

1 basis.

2 B. Claims Under California Government Code § 52.1

3 The TCA includes a requirement that "one who sues a public
4 employee on the basis of acts or omissions in the scope of the
5 defendant's employment [must] have filed a claim against the
6 public-entity employer." Briggs v. Lawrence, 230 Cal. App. 3d 605,
7 613 (1991); Cal. Gov't Code § 950.2. The Act provides in relevant
8 part, "A claim relating to a cause of action for death or for
9 injury to person . . . shall be presented . . . not later than six
10 months after the accrual of the cause of action." Cal. Gov't Code
11 § 911.2(a).

12 When a claim that is required to be presented within six
13 months "is not presented within such time, a written application
14 may be made to the public entity for leave to present such claim."
15 Id. § 911.4(a). This application "shall be presented to the public
16 entity . . . within a reasonable time not to exceed one year after
17 the accrual of the cause of action and shall state the reason for
18 the delay in presenting the claim. The proposed claim shall be
19 attached to the application." Id. § 911.4(b) (emphasis added).

20 If a late-claim application is denied, the claimant may
21 petition the superior court for relief from the claim requirements.
22 Id. § 946.6(a). The TCA provides that the court "shall relieve the
23 petitioner" from the claim-presentation requirements if it finds,
24 among other things, that the application for late filing "was made
25 within a reasonable time not to exceed that specified in
26 subdivision (b) of Section 911.4," i.e., one year. Id. § 946.6(c).
27 However, "[f]iling a late-claim application within one year after
28 the accrual of a cause of action is a jurisdictional prerequisite

1 to a claim-relief petition," and "[w]hen the underlying application
2 to file a late claim is filed more than one year after the accrual
3 of the cause of action, the court is without jurisdiction to grant
4 relief." Munoz v. State, 33 Cal. App. 4th 1767, 1779 (1995).

5 Mr. Potts argues that the claims against him based on
6 violations of California Government Code § 52.1 and state common
7 law should be dismissed because Plaintiff did not file an
8 administrative claim within six months of the accrual of his causes
9 of action. Again, however, Mr. Potts incorrectly assumes that all
10 of Plaintiff's claims accrued at the same time. Plaintiff's claim
11 for the common law tort of malicious prosecution and its
12 constitutional analog may not have accrued until he was acquitted
13 on September 29, 2006. See RK Ventures, 307 F.3d at 1060 n.11;
14 Scannell v. County of Riverside, 152 Cal. App. 3d 596 (1984) (state
15 law tort of malicious prosecution does not accrue until "the time
16 of entry of judgment of the underlying action in the trial court").
17 He filed an administrative claim with the California Victim
18 Compensation and Government Claims Board (the Board) on March 6,
19 2007, within the six-month deadline for that cause of action.
20 Therefore, failure to file a timely claim with the Board cannot
21 serve as a basis for dismissing Plaintiff's state law claims for
22 malicious prosecution.

23 Plaintiff's claims for the common law tort of false
24 imprisonment and its constitutional analog, and for the common law
25 torts of intentional and negligent infliction of emotional
26 distress, are subject to a different analysis. For the purposes of
27 this motion, the Court will consider Plaintiff's allegation that he
28 became aware of the conduct giving rise to these claims on January

1 27, 2004. Taking this as the date on which these claims accrued,
2 Plaintiff was required to file an administrative claim by July 27,
3 2004.¹³ As stated above, Plaintiff did not file his claim with the
4 Board until March 6, 2007. The Board denied the claim, which
5 Plaintiff had presented along with an application for leave to file
6 after the six-month deadline. The Board stated:

7 We have reviewed your claim and determined that the
8 [Board] has no jurisdiction to consider the claim for the
following reason(s):

9 Your claim was filed more than one year from the date of
10 the incident that is the basis of the claim, and it is
too late for the Board to consider an application to
11 present a late claim.

12 The [Board] will take no further action on this claim.

13 Def. Potts' Req. for Judicial Notice Ex. B.

14 Although Plaintiff has filed a petition in the superior court
15 seeking relief from the claims-presentation deadline, he has not
16 refuted Mr. Potts' argument that such relief is precluded as a
17 matter of law because Plaintiff's claim was filed more than one
18 year after these causes of action accrued. Accordingly, the
19 pendency of those proceedings does not provide a basis for
20 concluding that Plaintiff may be able to satisfy the TCA's
21

22 ¹³In his sur-reply, Plaintiff notes that the prosecution
23 identified Mr. Potts as a proposed witness in a court document
24 dated June 30, 2006. According to Plaintiff, this demonstrates
25 that Mr. Potts was "involved in the continuing prosecution" and
26 therefore committed "the re-occurring torts of false imprisonment,
27 negligent infliction of emotional distress and violations of civil
28 rights." Pl.'s Supp. Br. at 2. However, the complaint does not
allege any conduct on Mr. Potts' part subsequent to his initial
involvement in the prosecution, and his inclusion in the witness
list does not itself suggest his involvement in any tort or
constitutional violation. Plaintiff does not claim that Mr. Potts
actually testified at his trial.

1 requirements.¹⁴

2 Nor may Plaintiff rely on the provision of the Code of Civil
3 Procedure that tolls a cause of action for up to two years while
4 the would-be plaintiff is in prison. That provision specifies that
5 it "does not apply to an action against a public entity or public
6 employee upon a cause of action for which a claim is required to be
7 presented in accordance with [the TCA]." Cal. Civ. Proc. Code
8 § 352.1(b).

9 Plaintiff argues that Mr. Potts has waived the defense of
10 Plaintiff's failure to file a claim within the period specified in
11 the TCA. In support of this position, he relies on § 911.3 of the
12 Government Code. Section 911.3(a) provides that, when "a claim
13 that is required . . . to be presented not later than six months
14 after accrual of the cause of action is presented after such time
15 without the application [for leave to present a late claim]
16 provided in Section 911.4," the Board may "give written notice to
17 the person presenting the claim that the claim was not filed timely
18 and that it is being returned without further action." Section
19 911.3(a) goes on to specify the form that such notice must take.
20 Section 911.3(b), in turn, provides, "Any defense as to the time
21 limit for presenting a claim described in subdivision (a) is waived
22 by failure to give the notice set forth in subdivision (a) within
23 45 days after the claim is presented"

24 It is undisputed that the notice the Board provided Plaintiff
25 was not in the form specified in § 911.3(a). However, even if
26 § 911.3(b) gave a public entity, by virtue of its own error, the

27
28 ¹⁴If the superior court grants Plaintiff's requested relief, he
may seek to amend the complaint to add the relevant claims.

1 power to waive a timeliness defense on behalf of a government
2 employee sued in his or her individual capacity, by its own terms
3 the section applies only to claims that are filed after the six-
4 month deadline and are presented "without the application [for
5 leave to present a late claim] provided in Section 911.4." It is
6 clear that Plaintiff did file with his claim an application for
7 leave to file after the deadline. See Def. Potts' Req. for
8 Judicial Notice Ex. B. Accordingly, § 911.3 did not apply.
9 Instead, § 911.8, which specifies a different form of notice that
10 must be provided if an application to present a late claim is
11 denied, governed the Board's response to Plaintiff's claim.

12 Unlike § 911.3, § 911.8 does not contain a waiver provision.
13 Therefore, even though the Board does not appear to have complied
14 with the form of notice mandated by § 911.8, the content of the
15 Board's rejection letter does not support Plaintiff's waiver
16 argument.

17 Plaintiff advances his waiver argument on a second ground. He
18 notes that, in addition to filing a claim with the State Board, he
19 also filed a claim with the Sonoma County Board of Supervisors.
20 The complaint alleges that Mr. Potts was serving as an agent of
21 both the State of California and the County of Sonoma at the time
22 he authored the allegedly false report and gave the allegedly false
23 testimony. Therefore, Plaintiff argues, the claim filed with
24 Sonoma County satisfied the TCA's requirements, even if the claim
25 filed with the State did not.

26 Plaintiff has submitted a copy of his claim with the Sonoma
27 County Board of Supervisors. It demonstrates that he named Mr.
28 Potts among the members of the prosecution team whose acts gave

1 rise to his claim. See Pl.'s Req. for Judicial Notice Ex. 2 at 3.
2 Plaintiff apparently did not submit in connection with this claim
3 an application for leave to file after the six-month deadline. The
4 County rejected the claim without explanation. Id. Ex. 3. Because
5 it did not supply notice in the form required by § 911.3(a),
6 Plaintiff argues, it waived Mr. Potts' timeliness defense.

7 The Court is not persuaded that, under the circumstances here,
8 the County's apparent failure to comply with § 911.3(a) should
9 preclude Mr. Potts from raising Plaintiff's late filing as a
10 defense. Even if a public entity could waive a defense on behalf
11 of an employee sued in his or her individual capacity, Mr. Potts is
12 not employed by the County of Sonoma; he is employed by the State
13 of California. The chapter of the TCA addressing actions against
14 public employees is replete with references to administrative
15 claims filed with the "employing public entity." See Cal. Gov't
16 Code §§ 950-950.8. Plaintiff has cited no authority for the
17 proposition that, in a lawsuit against a public employee, a claim
18 filed with a public entity that does not employ the defendant can
19 serve to satisfy the TCA's requirements.

20 For these reasons, Plaintiff's § 52.1 claim against Mr. Potts
21 for false arrest and imprisonment in violation of the Fourth
22 Amendment, as well as his claims against Mr. Potts for the common
23 law torts of false imprisonment and negligent and intentional
24 infliction of emotional distress, are dismissed. Plaintiff is
25 given leave to amend the complaint if he can truthfully allege
26 additional facts sufficient to conclude that these claims are not
27 barred by his failure to file an administrative claim with the
28 State Board within six months from the date of their accrual.

1 C. Sufficiency of the Allegations in the Complaint

2 Mr. Potts argues generally that the complaint fails to contain
3 allegations sufficiently specific to put him on notice of the
4 claims against him. He is correct in asserting that the factual
5 allegations in the complaint are sparse. The complaint does not
6 specify what Mr. Potts' allegedly false statements were or how they
7 were false. Accordingly, the complaint is not sufficient to put
8 Mr. Potts on notice of what he is alleged to have done and how
9 those acts gave rise to civil liability.

10 The vagueness of the allegations against Mr. Potts provides an
11 independent basis for dismissing the claims against him. Thus, the
12 claims against Mr. Potts which have not already been dismissed
13 above are dismissed. Plaintiff is given leave to amend the
14 complaint to include non-conclusory allegations sufficient to
15 comply with the requirements of Rule 8(a) of the Federal Rules of
16 Civil Procedure.

17 CONCLUSION

18 For the foregoing reasons, the County Defendants' motion to
19 dismiss (Docket No. 21) is GRANTED IN PART and DENIED IN PART.
20 Plaintiff's first, second, sixth, eighth and ninth claims are
21 dismissed with prejudice as redundant, as are the constitutional
22 claims in the seventh cause of action. The references to the
23 California Civil Code in ¶ 67 of the complaint are stricken, as is
24 the reference to assault and battery in the caption. Plaintiff may
25 amend the complaint to add a claim for assault and battery, but he
26 must specify the factual basis for any such claim. All claims
27 against Defendant Martin are also dismissed with leave to amend to
28 specify a basis in fact.

1 Defendant Potts' motion to dismiss (Docket No. 32) is GRANTED.
2 Plaintiff may, if he wishes, amend the complaint to cure the
3 deficiencies in his claims against Mr. Potts, as detailed above.

4 If Plaintiff chooses to file a third amended complaint, those
5 claims which he re-asserts must be plead in conformity with the
6 Court's construction of them, as specified above.

7 Any third amended complaint must be filed within twenty days
8 from the date of this order. If Plaintiff does not file a third
9 amended complaint, the dismissed claims will be dismissed with
10 prejudice and the remaining Defendants will be required to file a
11 responsive pleading within thirty days from the date of this order.

12 IT IS SO ORDERED.

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14 Dated: 7/1/08



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CLAUDIA WILKEN
United States District Judge